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ZNR UUUUU ZZH
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FM AMEMBASSY SAN JOSE
TO RUEHC/SECSTATE WASHDC 9168
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUEATRS/DEPT OF TREASURY WASHINGTON DC

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SIPDIS

STATE PASS TO USTR FOR KSHIGETOMI
STATE PASS TO USITC FOR LSCHLITT
STATE PASS TO EXIMBANK FOR CREQUE
STATE PASS TO FEDERAL RESERVE MIAMI BRANCH MANIERO
TREASURY FOR SARA GRAY

SIPDIS

E.O. 12958: N/A
TAGS: [ECON](#) [ETRD](#) [PREL](#) [PGOV](#) [CS](#)
SUBJECT: COSTA RICA RESPONSE TO USTR REQUEST FOR INFO ON
CBI-BENEFICIARY COUNTRIES

REF: SECTATE 143212

¶1. The following is Post's response to Reftel's enquiries.
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519-2502, Fax (506) 519-2364, bitnesr@state.gov.

¶2. Costa Rica
Population: 4,299,234 (Dec 2006)
Per Capita GDP: \$5,050 (2006)

Department of Commerce Trade Statistics (2006):

U.S. Exports: \$4,132,405,740
U.S. Imports: \$3,844,274,625
U.S. Trade Balance: +\$288,131,116

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Economic Review
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¶3. Over the last two years Costa Rica has experienced significant economic growth, with foreign direct investment (FDI) and exports serving as the fuel for the economy. With GDP growth rising from 4.3% in 2004 to 5.9% in 2005 and hitting an estimated 8.2% in 2006, the country is experiencing the positive side effects of economic expansion including the lowest poverty level in 30 years and an unemployment rate of 4.6%. Over the last two years Costa Rican exports have grown 30.2%, from \$6,301 million in 2004 to \$8,207 million in 2006. Over the same timeframe, exports to the U.S., most of which enter under CBI/CBERA/CBTPA benefits, have increased 15% percent, from USD 3,332 million in 2004, to USD 3,844 million in 2006. The influx of FDI also plays a significant role in the economy, with FDI totaling USD 1,410 million in 2006 and U.S. FDI accounting for 80.4% of the total (excluding real estate).

¶4. Costa Rica's ratification of the Central American Free Trade Agreement (CAFTA-DR) in a nationwide referendum in October 2007 sets the stage for continued economic growth. After protracted and unproductive discussions on CAFTA-DR dragged on in the Costa Rican Legislative Assembly (Asamblea) for a year and a half, the Costa Rican government circumvented the legislative process by submitting the ratification of the agreement to a national referendum. This was the first referendum in Costa Rica's history, as well as the first FTA ever submitted to a referendum, and generated enormous interest in issues related to trade, intellectual property rights,

telecommunications, and insurance among the Costa Rican electorate. On the day of the referendum 59.24% of the electorate participated with 805,658 (51.6%) voting in favor of ratification and 756,814 (48.4%) voting against. Costa Rica now faces the daunting task of implementing the necessary laws and regulations to become compliant with its CAFTA-DR obligations before March 1, 2008. Opposition political figures, union leaders, and a number of academics have proclaimed they will continue to fight passage of these laws and regulations, despite having lost the referendum which ratified the deal. In fact, opposition supporters continue to congregate daily in the public gallery of the Asamblea and attempt to disrupt CAFTA-DR legislative proceedings.

¶5. Although the country has made progress in several fronts over the last two years, challenges to the Costa Rican economy remain. Despite improvements, the country still faced double-digit core inflation rates of 11.0% in 2004, 14.6% in 2005 and 10.6% in 2006. Although Costa Rica's tax system has seen improvement in collections with the advent of a new automated customs system and assistance from the United States Treasury, problems remain in simplifying the tax regime and collecting revenue. In the World Bank's "Doing Business" index, Costa Rica dropped to 162nd out of 178 countries in "paying taxes."

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WTO Obligations and Free Trade Agreements

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¶6. Commitment to Undertake WTO Obligations and Participate in Completion of a Free Trade Agreement: Costa Rica participates as an active member of the WTO, taking its Uruguay round commitments seriously and participating in discussions to move Doha round issues forward. While in 2000 Costa Rica ceased granting financial investment subsidies and tax holidays to new exporters, it continues to rely on duty-free exporting zones to attract foreign direct investment. Companies established in duty-free exporting zones were originally scheduled to begin paying taxes in 2007 but were allowed a two-year extension, if requested.

¶7. In addition to its attempts to ratify and implement CAFTA-DR, the Costa Rican government is also pursuing trade discussions with the European Union (EU). These multi-lateral discussions between the Central American countries and the EU stalled during the run-up to the Costa Rican referendum on CAFTA-DR but the first round of discussions took place the week of October 22 in San Jose. The second round has been scheduled for February, in Brussels.

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Protection of Intellectual Property Rights

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¶8. Costa Rica is due to pass several important laws to improve its intellectual property rights (IPR) regime in order to become CAFTA-DR compliant. The ratification and implementation of the International Convention for the Protection of New Varieties of Plants (UPOV) and the Budapest Agreement will bring the country closer to international IPR norms. Under its CAFTA-DR obligations, the country's criminal penalties must serve as a sufficient deterrent against IPR violations. It remains to be seen whether Costa Rica's legislature will pass the needed laws to strengthen the country's IPR regime sufficiently to meet its CAFTA-DR obligations.

¶9. Updating its laws, however, will likely not address the larger issue of a lack of general enforcement of IPR. The Attorney General for the Government of Costa Rica has not made IPR enforcement a priority due to a lack of resources and other "higher priorities." Criminal and civil remedies are available but the onus is completely on the victim of the crime, i.e., the victim not only has to investigate the violation but also, in most cases, must request seizure of

the property, pay for all required analysis, and employ legal counsel to bring the case to trial. Piracy of pharmaceuticals is a concern as the large majority of the drugs purchased by the Costa Rican Social Security System are generics and Costa Rica does not have the capability to test for bioequivalence. As a result of the deficiencies in enforcement, Costa Rica continues to remain on the Special 301 Watch List, a position it has maintained since 2002.

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Provision of Internationally Recognized Worker Rights

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10. The Costa Rican Constitution protects the right to organize. Specific provisions of the 1993 Labor Code reforms provide protection from dismissal for union organizers and members during union formation, including reinstatement for workers who were unfairly dismissed. Courts order reinstatement as appropriate under Costa Rican law, although employers do not always comply with such orders. Unfortunately, there are no specific tools to enforce reinstatement. Additionally, the backlog has inched up in the past few years and the average labor dispute case takes 3 to 4 years to be resolved. Two centers for alternative dispute resolution are operating in San Jose and more are planned for the Southern end of the country in San Isidro del General and for the Caribbean region, in Limon, to be operational by the end of 2007. A labor reform project is currently in Costa Rica's Legislative Assembly but its progress is slow. Costa Rican labor leaders rightfully claim that stronger remedies for retaliatory dismissals of trade unionists would advance trade union interests in the country.

11. According to the most recent July 2007 report of the Labor Ministry the rate of unionization is 36 percent in the public sector and 4.5 percent in the private sector, with an overall rate of 9 percent. Currently, public sector bargaining is governed by a provisional regulation that requires collective agreements to be reviewed by a commission of state officials, making approval contingent on the impact of the agreement on the national budget.

12. In May 2002, the Government of Costa Rica proposed legislation to expand and guarantee the right to bargain collectively in the public sector and in April 2003 the Government proposed the ratification of ILO Conventions 151 and 154. To date the Costa Rican Legislative Assembly has failed to enact either the legislation or the ILO Conventions.

13. Costa Rican law specifies the rights of workers to join unions of their choosing without prior authorization, and workers exercise this right in practice. Unions operate independently of government control. The law prohibits discrimination against union members and imposes sanctions against offending parties. In practice, however, labor organizations complain that employers, especially in the private sector, regularly fire workers for joining unions. Due to extensive backlog and outdated case management, labor dispute resolution within the Ministry of Labor takes an average of 3-4 years and some cases have taken up to 13 years to complete. As a result, according to union officials, employers regularly restrict employees' access to unions or dismiss workers without cause with little fear of official sanction, since few workers can maintain a dispute for such an extended period of time.

14. The GOCR is engaged in labor cooperation initiatives to increase the capacity of the Labor Ministry and to better protect worker rights. These initiatives included a regional project in Central America funded with a fiscal year 2004 grant of \$6.75 million from the U.S. Department of Labor to increase workers' and employers' knowledge of labor laws, strengthen labor inspections systems, and create and bolster alternative dispute resolution mechanisms. In Costa Rica this cooperation ended in 2007,

although the project continues for the other Central-American countries.

¶15. The Costa Rican Constitution prohibits forced or bonded labor, and there have not been any reports that such labor has occurred. Laws specifically prohibit forced and bonded labor by children, and the government enforces this prohibition effectively. The minimum age of legal employment in Costa Rica is 15 years.

¶16. The Costa Rican Constitution provides for a minimum wage by occupation that is set by the National Wage Council. The Ministry of Labor effectively enforces minimum wages in the San Jose area, but is less effective in rural areas, especially those where large numbers of migrants are employed. The national minimum wage does not provide a decent standard of living for a worker and family. The Constitution sets maximum workday hours, overtime remuneration, days of rest, and annual vacation rights. Generally, workers may work a maximum of eight hours during the day and six at night, up to weekly totals of 48 and 36 hours, respectively.

¶17. Nonagricultural workers receive an overtime premium of 50 percent of regular wages for work in excess of the daily work shift. The law on health and safety in the workplace requires industrial, agricultural, and commercial firms with 10 or more employees to establish a joint management-labor committee on workplace conditions and allows the government to inspect workplaces and to fine employers for violations.

¶18. Inspection and enforcement of labor violations are the responsibility of the Inspections Directorate of the Ministry of Labor. Officials within the directorate acknowledge that their operations and effectiveness are severely hampered by a lack of resources. While the office represents one of the most widely dispersed agencies within the Costa Rican government, with 31 offices located throughout the country, most offices are under-staffed, poorly equipped and isolated. As a result, inspectors focus primarily on large businesses within the formal labor sector.

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Commitments to Eliminate the Worst Forms of Child Labor
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¶19. Costa Rica is serious about addressing the issue of the worst forms of child labor, and President Arias has been vocal in his concern for child welfare. Costa Rica ratified Resolution 138 of the ILO in 1974. In July 2001, the Legislative Assembly ratified Resolution 182 of the ILO related to eliminating the worst forms of child labor, including the sexual exploitation of children. The government has also established a national committee to oversee the efforts to combat child labor and has signed a Memorandum of Understanding with ILO-IPEC. In August 2003, the Government of Costa Rica and the ILO released a joint, comprehensive report financed by the U.S. Department of Labor entitled "Results of the Survey of Child Labor and Adolescents in Costa Rica." According to the report, of the 1,113,987 children and adolescents between the ages of 5 and 17 in Costa Rica, 127,077 or 11.4 percent are employed or looking for work. There are no current figures available at this time.

¶20. Due to an under-funded and poorly equipped inspections regime, child labor remains an issue mainly in the informal sector of the economy, including small-scale agriculture, domestic work, and family-run micro-enterprises. Sex tourism is actively discouraged and enforcement has been strengthened, either by prosecution and lengthy imprisonment of U.S. citizen offenders in Costa Rica or their capture and deportation for punishment in the U.S., yet child prostitution remains a problem.

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Counter-Narcotics Cooperation

¶21. While the President has not identified Costa Rica as a major illicit drug transit or producing country under the provisions of the FOAA, Costa Rica functions as a transshipment point for the smuggling of cocaine and heroin from South America to the United States and Europe. Costa Rican law enforcement officials fully cooperate with U.S. counter-narcotics efforts. To date, this cooperation has resulted in the capture of over 40 tons of cocaine transiting through the country or its territorial waters in ¶2007. In 2006, Costa Rica captured what then was a record amount of 25.5 tons of cocaine.

Implementation of IACAC

¶22. Costa Rica ratified the Inter-American Convention Against Corruption (ICAC) in 1997. Domestic law imposes a requirement that senior government officials file personal financial reports while in office. The GOCR has taken legal steps to combat alleged corruption involving two ex-presidents who are charged with having been involved in two different corruption/kickback schemes. The cases are still pending after more than two years of investigation. As a result of these charges, the Legislative Assembly passed a strict anti-corruption law in 2006 to further strengthen the government's anti-corruption efforts.

Transparency in Government Procurement

¶23. While the Government of Costa Rica generally requires all procurement to be done through open bidding, problems and complaints occur. Costa Rican government procurement practices are complex and cumbersome, resulting from the many layers of government supervision in place to prevent illegal practices. Bid awards as well as the subsequent projects are frequently delayed by appeals by the losing parties or the Contraloria General's (Comptroller General's) efforts to regulate government purchases and procedures. In addition, over the last five years, several contracts tendered by state monopolies have been mired in controversy. In one case, alleged kickbacks came from a company that had "won" a contract with the state-owned telecommunications company, and the other, embezzlement of funds from the social security system. CAFTA-DR will allow competition in the insurance and telecommunications sectors, thereby lessening opportunities for corruption.

Additional Issues

Expropriation

¶24. The Government of Costa Rica has expropriated large tracts of rural land for national parks, biological reserves and indigenous reservations over the past 30 years. The Costa Rican Constitution stipulates that no land can be expropriated without prior payment and demonstrable proof of public interest, but disputes frequently arise over title to the property and the amount of compensation with some cases dragging on for over 30 years. Current and past governments have made some efforts to resolve several pending expropriation cases involving U.S. citizens, and those cases are currently winding their way through the Costa Rican courts. Most recently, in October 2007 the Costa Rican government announced the expropriation of beach-front property owned by U.S. citizens in order to protect a turtle-breeding habitat. Out of 178 countries surveyed in the World Bank's "Doing

Business" index, Costa Rica ranks 130 in "enforcing contracts" and 158 in "protecting investors" which accurately reflects the difficulties American investors experience in Costa Rica. There are cases where arbitral awards by the ICSID or by local arbitration in favor of U.S. citizens have been honored.

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Extradition
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¶25. Costa Rica has an extradition treaty with the United States. Costa Rican government officials and U.S. Embassy personnel enjoy a cooperative relationship in arranging approximately 15-20 prisoner extraditions from Costa Rica each year.

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Broadcast of Copyrighted Material
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¶26. There are no government-owned broadcasting entities that broadcast copyrighted materials without the express consent of U.S. copyright-holders.

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Market Access
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¶27. Costa Rica's October 7, 2007 ratification of CAFTA-DR and its efforts to implement the laws to conform to its CAFTA-DR obligations indicate the country's commitment to providing equitable and reasonable access for U.S. goods and services to its market. However, as the campaign prior to the referendum demonstrated, there is a large contingent of both Costa Rican citizens and politicians that oppose a further opening of the Costa Rican market and monopolies. As such, it will remain important, even after CAFTA-DR is fully implemented, to monitor market access in Costa Rica.

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Self Help Measures
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¶28. The set of laws that Costa Rica must pass in order to implement CAFTA-DR consist of a number of measures that will increase the competitiveness of several sectors of the economy. In addition, the CAFTA-DR obligations concerning IPR should create the proper environment for industries in Costa Rica to develop more of their own innovative products. Costa Rica has also taken concrete steps to facilitate trade. Over the last year, the country, using its own resources and initiative, has implemented a new customs regime, TICA. This system automates many of the customs transactions, resulting in fewer opportunities for corruption. The Arias administration has made infrastructure improvements a priority, leading to some improvement in the road surface of many transportation routes. While many issues remain, the current Costa Rican government is cognizant of the challenges and has articulated a desire to address them. Among the most prominent are reforming laws surrounding government concessions, updating the tax policy, and improving the responsiveness of government.

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